

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

**File No. RH01018367
January 22, 2002**

NOTICE OF PROPOSED RULEMAKING

SUBJECT: AUTOMOBILE INSURANCE CONSUMER SERVICE ASSESSMENT

PROPOSED REGULATORY ACTION

The California Department of Insurance (CDI) proposes to add section 2698.68 to Article 5 of Subchapter 9, Chapter 5, of Title 10 of the California Code of Regulations (CCR), regarding the program for the investigation and prosecution of organized automobile insurance fraud.

PUBLIC HEARING

PUBLIC PROCEEDINGS: Notice is hereby given that the CDI will conduct written proceedings, during which time any interested person or such persons duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the CDI, Criminal Investigations Branch, attn: Wesley E. Kennedy, Senior Staff Counsel at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826, by 4 p.m. on May 6, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand delivery be submitted in triplicate. A public hearing regarding the proposed rulemaking has been set for May 6, 2002 at 10:00 a.m. at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826.

Comments sent by facsimile: (916) 255-3344, or electronic mail: kennedyw@insurance.ca.gov must be received before 4:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the CDI to provide copies of any notices for proposed changes in the regulation text of which additional comments may be solicited.

CONTACT: Substantive and general inquiries concerning the action described in this notice may be directed to Wesley E. Kennedy, Senior Staff Counsel, at (916) 854-5760. General inquiries may also be directed to George Teekell, Staff Counsel (415) 538-4390. In any such

inquiry, please identify the action by using the CDI regulation control number: RH01018367.

AUTHORITY AND REFERENCE

Authority: CalFarm Insurance Company et al. V. Deukmejian, et al. (1989) 48 Cal.3d 805, 824; Section 1872.81, Insurance Code. Reference: 1872.81, Insurance Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Insurance Commissioner of the State of California (Commissioner) proposes to add Subchapter 9, Article 5, Section 2698.68, Title 10, Chapter 5 of the CCR regarding the program for assessment of insurers to fund the automobile insurance consumer services function of the CDI. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of California Insurance Code (CIC) section 1872.81 which requires the Commissioner to assess funds for the purpose of funding the consumer services functions of the Department relating to automobile insurance.

SB 940, Chapter 884, Statutes of 1999, was signed by the Governor on October 9, 1999 and, inter alia, added CIC 1872.81. CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1872.81, requires the Commissioner to establish an annual assessment on each automobile for which a policy of insurance has been issued in order to fund the consumer services function of the CDI relating to automobile insurance, specifically including the rating and underwriting services bureau, the claims services bureau, the investigations bureau or any successor bureaus of the CDI that may assume the consumer services functions of these bureaus.

The proposed addition is necessary to implement, interpret and make specific the provisions of CIC sections 1872.81 and to establish a process and methodology for calculating and collecting the assessment that conforms with that currently employed in the related provisions of title 10, CCR, sections 2698.61 and 2698.62. The proposed action would specify the criteria for the calculation and payment of the annual assessment.

The specific regulation being added by this notice is as follows:

Section 2698.68 Purpose and Assessment of Annual Fee

In addition to the fee imposed pursuant to California Insurance Code Section 1872.8, each insurer will be assessed and will pay an annualized fee of thirty cents (\$.30) for each vehicle it insures under a policy of insurance issued in this State. This fee shall be paid in increments of seven and one half cents (\$.075) for each calendar year quarter or any part thereof. The assessment shall be made and submitted in the same manner as set forth in Section 2698.62 of this Title.

MATERIAL INCORPORATED BY REFERENCE

There is no material incorporated by reference.

DETERMINATIONS

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an adverse effect on small businesses. The assessment provided for by this regulation are directed at admitted automobile insurance carriers.

IMPACT ON BUSINESSES AND JOBS

It is the initial determination of the Commissioner of the California Department of Insurance that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with the businesses on other states because the proposed regulation does not impose any additional expense on affected entities. The Commissioner has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have significant cost impact on private persons or businesses directly affected. The proposed amendments do not create or impose any additional assessment.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The CDI has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(12), the CDI must determine that no alternative considered by the California Department of Insurance would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affect private persons than the emergency action.

The Commissioner must determine that no alternative considered by the agency would be more effective in carrying out the purposes for which the regulation are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations. The amendments proposed in this notice have been developed as a result of discussion with affected entities and members of the public since the original regulations text was adopted and during the promulgation of amendments in a similar grant program.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facilities used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below in order to make special arrangements, if necessary).

REPRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will be accepted. Comments should be sent to the agency contact person: Department of Insurance, Fraud Division, Attn: Wesley E. Kennedy, 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826.

All interested persons may present oral/or written testimony at the scheduled public hearing.

ACCESS TO COPIES OF PROPOSED REGULATION AND INITIAL AND FINAL STATEMENT OF REASONS

The CDI has prepared and has available for public review an initial statement of reasons for these regulations and any supplemental information contained in the rulemaking file. CDI will prepare and make available a final statement of reasons for these regulations. Upon prior request, the rulemaking file is available for inspection at 9342 Tech Center Drive, Suite 100, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted. Requests should be directed to the agency contact person (listed above).

The CDI maintains an internet website where copies of materials distributed by the Department may be obtained. That website is: www.insurance.ca.gov. At the top of the page find the heading "Protecting Consumers." In this section find the subheading "BE INFORMED." Click on the "search for proposed regulations" link. When the search field appears enter "RH01018367" (the Department's regulation file number for these regulations). Alternatively, search for the CIC code section that these regulation implement (e.g., "1872.81") or search by key word (e.g., "assessment" or "consumer services"). Then click on the "submit" button to display links to the related documents.

ADOPTION OF REGULATION

Following the close of comment period and hearing, the Commission may adopt the regulation substantially as described in this notice and Informative Digest. Copies of the regulation, as adopted, will be sent to all persons on the Commissioner's interested parties mailing list and to all persons who provided comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

PUBLIC DISCUSSION

A public discussion was not undertaken prior to the publication of this regulation. The amendments do not involve complex or a large number of proposals that can not easily be reviewed during the comment period. In addition, the amount of the assessment is directed by statute and the text incorporates existing regulatory text recently promulgated in a closely related program. It is not anticipated that these conforming amendments will be controversial.

ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written), the Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text that the public was originally noticed of in this proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amended or repeals the resulting regulations. At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action. If adopted this regulation will appear in Title 10, Chapter 5, Subchapter 9, Article 5, section 2698.68, CCR.

CALIFORNIA DEPARTMENT OF INSURANCE

/s/

WESLEY E. KENNEDY
Senior Staff Counsel